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REMARKS

Claims 1, 3-8, 11, 16, 21-33, 41-48, 57 and 58 are currently pending in the subject application and are presently under consideration. Claim 48 has been amended to correct minor informalities and remove issues in the event of an appeal. A version of all claims is shown at pages 2-8 of this Reply.

Applicant's representative kindly thanks the Examiner for the courtesies extended during the telephonic interview on October 4, 2005. The substance of the interview was to determine the Examiner's interpretation of the terms "derive" and "impact value", but no formal agreement as to the claims was reached.

Favorable reconsideration of the subject patent application is respectfully requested in view of the comments and amendments herein.

I. Objection of Claims 48 Under 37 C.F.R. 1.75(c)

Claim 48 is objected to under 37 C.F.R. 1.75(c). The Examiner improperly concludes at page 5 of the Final Office Action (dated August 18, 2005) that "*One could infringe on claim 48 without necessarily infringing claim 41 [the base claim]*". However, in order to infringe claim 48, all the acts recited in claim 41 must also occur, with the additional limitation that these acts occur on a computer readable medium having stored thereon computer executable instructions for carrying out the method of claim 41. Therefore, claim 48 cannot be infringed without infringing claim 41. Moreover, 37 C.F.R. 1.75(c) expressly provides that "*One or more claims may be presented in dependent form, referring back to and further limiting another claim or claims in the same application.*" Claim 48 satisfies this requirement because it refers back to and further limits claim 41 as provided by 37 C.F.R. 1.75(c). Accordingly, this objection should be withdrawn.

II. Rejection of Claims 22-33 and 41-47 Under 35 U.S.C. §101

Claims 22-33 and 41-47 stand rejected under 35 U.S.C. §101. Withdrawal of this rejection is requested for at least the following reasons. Independent claims 22 and 41 are within the technological arts and produce a useful, concrete and tangible result. In particular, independent claims 22 and 41 fall within the well-known Pre-computer activity "safe harbor" provisions listed in the MPEP §2106.

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The Pre-computer activity safe harbor protects two types of data as statutory subject matter: (1) data that is an intangible representation of a physical activity, and (2) data that is an intangible representation of a physical object. (See MPEP §2106(IV)(B)(2)(b)(i)) (emphasis added). Independent claim 22 (and similarly independent claim 41) recites, "receiving data indicative of business activities". It is readily apparent that data indicative of business activities is data that is an intangible representation of a physical activity (e.g., a business activity). At pages 2-3 of the Final Office Action, the Examiner states that "the phrase 'of business activities' specifies the *type* of data that is being received." Applicant's representative avers, and points out that the *type* of data is what invokes the statutory safe harbors. Therefore, data indicative of business activities is precisely the *type* of data that the Pre-computer activity safe harbor provision covers as statutory subject matter.

Moreover, in *ex parte Lundgren*, a recent precedential opinion handed down by the Board of Patent Appeals and Interferences, this court has eliminating the Patent Office procedure of rejecting patents under 35 U.S.C. § 101 as outside of the "technological arts". (See <http://www.uspto.gov/web/offices/dcom/bpai/prec/2003-2088.pdf>).

Our determination is that there is currently no judicially recognized separate "technological arts" test to determine patent eligible subject matter under § 101. We decline to create one. Therefore, it is apparent that the examiner's rejection can not be sustained. See *ex parte Lundgren* at page 7.

Accordingly, independent claims 22 and 41, as well as all claims that depend there from, are statutory processes, protected at least by the safe harbor provisions, and this rejection should be withdrawn.

III. Rejection of Claims 57 and 58 Under 35 U.S.C. §112

Claims 57 and 58 stand rejected under 35 U.S.C. §112. Withdrawal of this rejection is requested for at least the following reasons. Claims 57 and 58 particularly point out and distinctly claim the subject matter of the applicant's invention. In particular, claims 57 and 58 recite, "a computer system that performs the method of..." Computer systems are known in the art and an exemplary computer system is provided in the specification portion of applicant's

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disclosure at FIG 26 and page 49, line 3 through page 52, line 19. What is claimed are those computer systems in which the indicated method is performed, therefore, contrary to the Examiner's assertion, the metes and bounds of the claims are clearly defined. Accordingly, this rejection should be withdrawn.

IV. Rejection of Claims 1, 3-5, 11, 16, 21-32, 41, 44-46, 48, 57 and 58 Under 35 U.S.C. §102(e)

Claims 1, 3-5, 11, 16, 21-32, 41, 44-46, 48, 57 and 58 stand rejected under 35 U.S.C. §102(e) as being anticipated by Groat, *et al.* (US 2001/0032155 A1). Withdrawal of this rejection is requested for at least the following reasons. Groat, *et al.* does not disclose, teach or suggest each and every aspect of applicant's claimed invention.

A single prior art reference anticipates a patent claim only if it expressly or inherently *describes each and every limitation set forth in the patent claim*. *Trintec Industries, Inc., v. Top-U.S.A. Corp.*, 295 F.3d 1292, 63 U.S.P.Q.2D 1597 (Fed. Cir. 2002); *See Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ 2d 1051, 1053 (Fed. Cir. 1987). *The identical invention must be shown in as complete detail as is contained in the ... claim*. *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989) (emphasis added).

Applicant's claimed invention relates to a database management system to facilitate budgeting and forecasting by, for example, analyzing base data in order to characterize the impacts various factors might have upon an account, and adjusting the base data accordingly in order to make the forecast. As an exemplary illustration, the subject invention can collect sales information as base data. In addition, environmental and economic data that may have an impact upon facility performance can also be collected as base data. (See page 8, lines 12-14). Thus, by comparing this base data with other, similar base data, the impact of certain factors, such as good weather versus bad weather, and/or the effects of a holiday or a nearby convention on store sales can be characterized. (See page 31, lines 4-7). Finally, once the impact of certain factors (*e.g.*, weather, holiday, *etc.*) has been characterized, this impact value can be applied to create adjusted data by applying the impact value to the base data. (See page 38, lines 3-14). For example, if it is known that a convention will be held near the facility next month, and that the impact value of

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a convention is an increase in sales by a certain percentage, budgeting and/or forecasting in this way can be more accurate than merely making a forecast based upon sales for a similar period. In particular, independent claim 1 recites, "a third user interface element characterizing an impact value *derived from the base data*, and adjusts the base data to provide adjusted data for the at least one account". Independent claims 22 and 41 recite limitations that are, for the purposes of this Reply, similar to independent claim 1. Groat, *et al.* does not disclose, teach, or suggest these novel features.

Groat, *et al.* relates generally to a financial status display system, and, more specifically, to a system that provides visual representations of personal financial analysis and planning. (See Fig. 1). Groat, *et al.* employs objects to both graphically illustrate and functionally calculate the relationships between various financial parameters. Among the relevant objects employed are "values", "properties", "expressions", "growth", "inflow", "pipes", and "events". (See paragraphs 0032-0037, 0039, 0042, and 0044). More particularly, Groat, *et al.* can use an "expression" to modify a "value", then "inflow" the modified "value" into another object *via* a "pipe". Hence, Groat, *et al.* expressly teaches that base data can be modified by an "expression", which is a mathematical formula input by the user. The Examiner improperly concludes that this "expression" can be an "impact value" recited in the subject claims because the "expression" impacts the adjusted data. However, the "expression" is based upon user input whereas the claimed "impact value" is *derived from the base data*.

For example, if a determination is made by the subject invention that a local convention boosts sales by 20%, then an impact value of 1.2 can be derived from this data. Hence, the impact value, I, can be applied to the sales data, S, every time the local convention occurs in order to generate forecasts for adjusted sales, AS. Hence, the simple formula for this rudimentary example would be $AS = S \times I$, or $AS = S \times 1.2$. In contrast, Groat, *et al.* does not derive an impact value from base data, however, it is the Examiner's contention that merely supplying the proper "expression" in place of the "impact value" is identical. To illustrate the shortcomings in this rationale, assume that the user in Groat, *et al.* made the same determination (e.g., that sales are boosted by 20% during convention days) and decided to plug this data in as an "expression", where the value of the "expression", E, is 1.2. Thus, $AS = S \times E$, or $AS = S \times 1.2$, which is the identical equation with an identical result the above. However, further assume that the user made a typo, and plugged in the value of E as 1.3 rather than 1.2. In this latter case,

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the forecast made by Groat, *et al.* will be incorrect because it will adjust sales upward by 30%, not 20%.

The obvious distinction does not rest upon the condition that the user must make an error, rather, it is illustrative that whether or not an error occurs the “impact” arrived at in Groat, *et al.* is based solely upon user input. It is not, therefore, *derived from the base data*. Consequently, even if the user (or some other external entity) characterized an impact value derived from the base data, the “expression” in Groat, *et al.* is not based upon that characterization, but instead based upon the actual input. Accordingly, Groat, *et al.* does not teach or suggest a third user interface element characterizing an impact value *derived from the base data*, and adjusts the base data to provide adjusted data for the at least one account, and this rejection of independent claims 1, 22 and 41, as well as all associated dependent claims should be withdrawn.

V. Rejection of Claims 6-8, 33, 42 and 43 Under 35 U.S.C. §103(a)

Claims 6-8, 33, 42 and 43 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Groat, *et al.* (US 2001/0032155 A1). This rejection should be withdrawn for at least the following reasons. Claims 6-8 and 33 depend directly or indirectly from claims 1 and 22, respectively. Accordingly, claims 6-8 and 33 are allowable for at least the same reasons as independent claims 1 and 22, and this rejection should be withdrawn.

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CONCLUSION

The present application is believed to be in condition for allowance in view of the above comments and amendments. A prompt action to such end is earnestly solicited.

In the event any fees are due in connection with this document, the Commissioner is authorized to charge those fees to Deposit Account No. 50-1063 [BOYKP103US].

Should the Examiner believe a telephone interview would be helpful to expedite favorable prosecution, the Examiner is invited to contact applicant's undersigned representative at the telephone number below.

Respectfully submitted,

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